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United States Senate

COMMITTEE ON FOREIGN RELATIONS

WASHINGTON, DC 20510-6225

March 30, 2004

Dear Colleague:

I have written to you previously about the benefits to U.S. national security of the Law of the Sea Convention. Since my letter to you, some have continued to press – including in testimony before a Senate Committee – the false and irresponsible assertion that acceding to the Convention will inhibit the ability of the United States to pursue President Bush's Proliferation Security Initiative (PSI), which works to interdict by land, sea and air weapons of mass destruction, their delivery systems and related materials. I want to take this opportunity to again make clear that nothing in the Law of the Sea Convention will inhibit the United States from pursuing PSI; indeed, acceding to the Convention will enhance our ability to pursue PSI.

There are several mutually reinforcing reasons why acceding to the Law of the Sea Convention will not inhibit the United States from pursuing PSI.

First, acceding to the Law of the Sea Convention will not result in any change in the rules the United States is subject to relevant to PSI. As noted in the attached letter from State Department Legal Adviser William Taft, the rules contained in the Law of the Sea Convention applicable to boarding and searching foreign ships at sea are unchanged from the rules in this regard the United States is already subject to under the 1958 Geneva Conventions on the Law of the Sea, to which the United States is a party.

Second, it has been U.S. policy since President Reagan's 1983 Statement of Oceans Policy to act in accordance with the Convention's provisions with respect to the traditional uses of the oceans, which include the Convention's provisions regarding the boarding and searching of foreign ships at sea. The elements of the U.S. Armed Forces carrying out PSI are thus already operating under the Convention's rules, and have been doing so for over 20 years.

Third, PSI's own rules provide that PSI activities will be consistent with the Convention. The Statement of Interdiction Principles pursuant to which PSI operates explicitly states that interdiction activities under PSI will be undertaken "consistent with national legal authorities and relevant international law and frameworks". As State Department Legal Adviser William Taft confirmed in testimony before the Foreign Relations Committee, the relevant international law framework for PSI includes the Law of the Sea Convention.

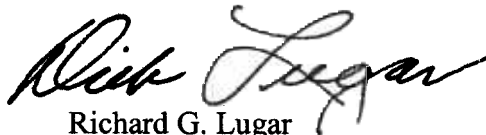
Fourth, all 15 countries that have joined with the United States in PSI are parties to the Law of the Sea Convention and accordingly observe its provisions.

In fact, representatives of our armed forces who are responsible for carrying out PSI have stated that acceding to the Law of the Sea Convention will strengthen the ability of the United States to pursue PSI.

Admiral Michael Mullen, Vice Chief of Naval Operations, testified before the Foreign Relations Committee that being party to the Convention "would greatly strengthen [the Navy's] ability to support the objectives" of PSI by reinforcing and codifying freedom of navigation rights on which the Navy depends for operational mobility. In a similar vein, Deputy Assistant Secretary of Defense for Negotiations Policy Mark Esper testified that "as a party to the Law of the Sea Convention, the United States will have another avenue through which to achieve consensus proscribing the maritime trafficking of weapons of mass destruction, their delivery systems, and related materials to and from states of concern and terrorists."

I have devoted great efforts during my career to develop effective responses to the threat posed by the proliferation of weapons of mass destruction, and I am a strong supporter of PSI. The Law of the Sea Convention is fully consistent with PSI, and joining the Convention will enhance our ability to make PSI successful.

Sincerely,

A handwritten signature in black ink, appearing to read "Rick Lugar", written in a cursive style.

Richard G. Lugar
Chairman

RGL/mmk

Attachment

THE LEGAL ADVISER
DEPARTMENT OF STATE
WASHINGTON

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March 24, 2004

Dear Mr. Chairman:

Thank you for holding the hearing on the Law of the Sea Convention last Tuesday. We appreciate the opportunity to appear before your committee and explain to it the reasons for the Administration's strong support for the Convention.

During the hearing you asked me the following question:

"As a nonparty to the Convention, we are allowed to search any ship that enters this 200 nautical mile area to determine if it could harm the United States or pollute the marine environment. Under the Convention, the US Coast Guard or others would not be able to search any ship until the UN is notified and approves the right to search the ship. Is that accurate?"

Our answer to that question is that the description of the Convention's provisions on this question is not correct. The basic rules for boarding and searching foreign ships at sea contained in the 1958 Geneva Conventions on the Law of the Sea, to which the United States is a party, are unchanged in the 1982 Convention on the Law of the Sea. The law of the sea gives no role to the UN in deciding when and where a foreign ship at sea may be boarded.

The 1982 Convention provides additional authority for a coastal State to board a foreign ship in its exclusive economic zone if the ship is suspected of violating its laws for the protection of the marine environment.

The Honorable

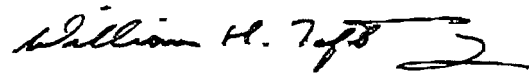
James M. Inhofe, Chairman,

Committee on Environment and Public Works,
United States Senate.

As stated in the resolution of advice and consent now before the Senate, nothing in the Convention impairs the inherent right of individual or collective self-defense or rights during armed conflict.

We would be glad to answer any other questions you might have as a follow-up to the hearing.

Sincerely,

A handwritten signature in cursive script, reading "William H. Taft, IV". The signature is fluid and includes a long, sweeping horizontal stroke at the end.

William H. Taft, IV

cc: Sen. James M. Jeffords
Sen. Richard G. Lugar

*Mr. Chairman: As you said, I should
have been able to answer this question
yesterday. The reference to the U.N.
was new to me. WHT IV*